

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

JOHN BRUENS, MARY STEWART,
MELISSA VAUGHN, and
MARC SIROCKMAN

Defendants.

NO. 05-CR-10102 JLT

DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY

Defendants Melissa Vaughn, Mary Stewart, and Marc Sirockman ("Defendants") move this Court for permission to file a reply in response to the Government's Opposition To Defendant Melissa Vaughn's Motion *In Limine* To Redact Voicemail. In support of this motion, the Defendants state as follows:

1. On March 22, 2007, Defendants filed a motion *in limine* to redact the transcription of a voicemail to avoid unfair prejudice, inadmissible multiple layers of hearsay and information that is inaccurate and unreliable.
2. On April 3, 2007, the Government filed opposition to this motion, arguing that the voicemail will be used to prove the knowledge of the defendants.
3. Defendants move for leave to file a reply in order to address the Government's argument and to propose a stipulation that would eliminate the need for any redactions. Defendants' proposed reply brief is attached as Exhibit A.

WHEREFORE, Defendants hereby move this Court for leave to file a reply brief in order to respond to the Government's opposition.

Respectfully submitted,

MELISSA P. VAUGHN

By her undersigned attorneys

/s/ Adam S. Hoffinger

Adam S. Hoffinger, Esq.

(admitted *pro hac vice*)

James M. Sullivan, Esq.

(admitted *pro hac vice*)

MORRISON & FOERSTER LLP

2000 Pennsylvania Avenue, N.W.

Washington, D.C. 20008-1888

(202) 887-1500

MARY STEWART

By her undersigned attorneys

/s/ Mark Berman

Mark A. Berman, Esq.

Hartmann Doherty Rosa & Berman, LLC

126 State Street

Hackensack, NJ 07601

(201) 441-9056

MARC SIROCKMAN,

By his undersigned attorneys,

/s/ Tracy A. Miner

Tracy A. Miner

McKenzie E. Webster

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY

AND POPEO, P.C.

One Financial Center

Boston, MA 02111

Dated: April 5, 2007

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion and reply were filed electronically in compliance with ECF procedures on this 5th day of April 2007.

/s/ James M. Sullivan

EXHIBIT A
TO DEFENDANT'S
MOTION FOR LEAVE TO
FILE A REPLY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
)	No. 05-CR-10102 JLT
Plaintiff,)	
)	
v.)	
)	
JOHN BRUENS, MARY STEWART,)	
MELISSA VAUGHN, and)	
MARC SIROCKMAN,)	
)	
Defendants.)	
)	

**DEFENDANT MELISSA VAUGHN'S REPLY MEMORANDUM
IN SUPPORT OF MOTION *IN LIMINE* TO REDACT VOICEMAIL**

In the "Government's Opposition To Defendant Melissa Vaughn's Motion *In Limine* To Redact Voicemail" (hereafter "Opposition"), the Government contends that the voicemail is not hearsay because it will not be offered for the truth of the matters asserted therein. The Government's own arguments belie its claim.

The Government intends to use the voicemail to establish "the knowledge of the defendants." See Opposition at 3. While the Government does not clearly explain what "knowledge" the substance of the voicemail proves, it appears that the Government will seek to use the voicemail to establish that the defendants had knowledge "that doctors who were made the Cannes offer had recognized the illegality of the scheme to offer the trip in return for writing additional prescriptions of Serostim." See Opposition at 3-4. To do so, however, the

Government would have to offer statements in the voicemail for the truth of the matter asserted—namely, that the Cannes program “was unethical . . . the very thing that the FDA looks for.” See Exhibit A to Melissa Vaughn’s Motion *In Limine* To Redact Voicemail. It is disingenuous for the Government to suggest that it will not offer the voicemail “to prove the doctors’ actual statements.” See Opposition at 4. The truth of these statements in the voicemail—which we seek to redact—is precisely what the Government wants to prove at trial.

If the Government is truly prepared to forego offering and using the voicemail statements for their truth, then we request that (1) the Government stipulate that these statements—*i.e.*, that the Cannes program was unethical, what the FDA looks for, etc.—are not true; (2) the Court so order; and (3) the stipulation and order be read to the jury when the voicemail is offered. If the Government refuses to stipulate, it will be clear that the Government does, in fact, want the voicemail statements to be considered by the jury for the truth and that its claim to the contrary is nothing more than an attempt to slip through the back door what the rules of evidence will not allow to enter through the front door.

Respectfully submitted,

MELISSA P. VAUGHN

By her undersigned attorneys

/s/ Adam S. Hoffinger

Adam S. Hoffinger, Esq.

(admitted *pro hac vice*)

James M. Sullivan, Esq.

(admitted *pro hac vice*)

MORRISON & FOERSTER LLP

2000 Pennsylvania Avenue, N.W.

Washington, D.C. 20008-1888

(202) 887-1500

MARY STEWART

By her undersigned attorneys

/s/ Mark Berman

Mark A. Berman, Esq.

Hartmann Doherty Rosa & Berman, LLC

126 State Street

Hackensack, NJ 07601

(201) 441-9056

MARC SIROCKMAN,

By his undersigned attorneys,

/s/ Tracy A. Miner

Tracy A. Miner

McKenzie E. Webster

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY

AND POPEO, P.C.

One Financial Center

Boston, MA 02111

Dated: April 5, 2007

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion was filed electronically in compliance with ECF procedures on this 5th day of April 2007.

/s/ James M. Sullivan